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Supreme Court, U.S.
FILED

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No.

SUPREME COURT OF THE UNITED STATES

SUC. CECILIO HUERTAS BARBOSA, ET.AL.

Petitioners,

vs.

THE COMMONWEALTH OF PUERTO RICO., ET.AL.

Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED BEFORE THE HONORABLE COURT AND COURTS BELOW

A. Whether or not the life, property and livelihood of the residents or citizens of a state are fundamental rights protected by the Fifth Amendment and the Fourteenth Amendment of United State Constitution?

B. Whether or not the state violates the Fifth and Fourteenth Amendments of U.S. Constitution, when statutes or laws of said states does not provide just, full and/or reasonable compensation to its victims, who have lost their life, limb and health and/or suffered in their livelihood, due to the State's (Commonwealth of Puerto Rico´s) wrongful and negligent acts and/or omissions?

C. Are the standards of Due Process under the U.S. Constitution met, with respect to a Puertorrican statute Title 32 LPR Section 3077 (a) that grants special privileges to the Commonwealth of Puerto Rico as a litigant in a state court and in prejudice of its citizens?

D. Whether or not the there is a direct violation of the Equal Protection Clause of the United States Constitution when the Commonwealth of Puerto Rico, as a party, limits its liability to the amount of $150,000.00, per occurrence, not withstanding the fact that the damages created by the negligence of the Commonwealth of Puerto Rico in equity and in justice exceeds $1,680,0000.00; as per the judgment of trial court?

E. Whether or not the Commonwealth of Puerto Rico has created, through its statute, Puerto Rico Public Law 104 of 1955, also known as the Law of Litigation against the State, a due process violation when it takes economic benefits or just compensation in an arbitrary and unreasonable manner? In short, whether or not Public Law 104, of 1955, violates Fifth Amendment regarding taking of property of a person without just compensation. In other words, if said statute is confiscatory in its nature and/or in its application.

F. Whether or not this Honorable Court has subject matter jurisdiction when a fundamental right of a citizen is violated by a state statute; not withstanding the Eleventh Admendment bar whereby a state cannot be sued in a United States District Court by a Plaintiff seeking damages?

G. Whether or not a citizen of a state can sucessfully invoke the jurisdiction of this Honorable Court as well as the U.S. District Court by secking declaratory judgment to declare unconstitutional Section 3077 (a)?

PARTIES TO THE PROCEEDING

The petitioners: CECILIO, DANIEL, SALVADOR SANTOS, HERMINIA ELMIS, MANUEL MINERVA, JOSEFINA, CARMEN IRIS, LUZ, MATEO Y FRANCISCO, all whose surname are HUERTAS LABOY; SANTOS HUERTAS LABOY Y CASIMIRA MARTINEZ and the Conjugal partnership composed of SANTOS LABOY Y CASIMIRA MARTINEZ, respectfully request that a Writ of Certiorari be granted in order to review a judgment of the United State Court of Appeals for the First Circuit.

For the Respondants - (Defendants), the Commonwealth of Puerto Rico is a party to these proceedings and was a party before the U.S. of Appeal, First Circuit as well as U.S. District Court. Its attorney for the record is the Attorney General for the Commonwealth of Puerto Rico, Honorable Roger Sabat, Esq., as well as the attorney for record, Griselle González, Federal Litigation Division. This statement is made in reference to Rule 29 (4) (c).

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James and Gray, "THE LAW OF TORTS", Boston, Little, Brown and Company 2 ed, 1986, Vol.5,page 596; 16

Jaffe, SUITS AGAINST GOVERNMENTS AND OFFICERS: SOVEREIGN IMMUNITY, 77 Harv. L. Rev. 1, 2-19 (1963). 16

Lawrence Tribe, AMERICAN CONSTITUTIONAL LAW, P. 1002. 19

APPENDIX

Appendix A:

Judgment of United States Court of Appeals (umpublished), for the First Circuit, entered on 1-2

November 7, 2000, in the case of Sucesión Cecilio Huertas Barbosa, et.als. v. Commonwealth of Puerto Rico, Civil Number 99-2345.

Appendix B:
Umpublished judgment of United States District Court, for the District of Puerto Rico, entered on October 27, 1999. In the case of Sucesión Cecilio Huertas Barbosa, et.als. v. Commonwealth of Puerto Rico, Civil Number 99-1624 (DRD). 3-4

Appendix C 1:
The Opinion of the Supreme Court of Puerto Rico (not published) can be found in Succession Cecilio Huertas vs. Hõspital Alejandro Buitrago, Civil Number CC1999-0373. 5-8

Appendix D:
The Opinion of the Circuit Court of Appeals, for the 9-17

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[1] Notes: Appendixs, C, D and E were translated by Petitioners; however this Honorable Court may order the translation of said documents in accordance to Rule 30.

District of Puerto Rico, also not published can be found in Succession Cecilio Huertas vs. Hospital Alejandro Buitrago, Case Number KLAN1998-01438.

Appendix E: 18-37

Judgment of the Court of First Instance, Superior Part of Guayama entered on October 20,1998 in the case of Succession Cecilio Huertas vs. Hospital Alejandro Buitrago, Civil Number GDP1988-2291.

Appendix F:

Complaint 38-43

Petitioners, respectfully request that a writ of certiorari be issued to review the appellants proceedings before the lower court, infra.

OPINIONS BELOW

Judgment of the United States Circuit Appeal, First Circuit found in Sucesión Cecilio Huertas Barbosa, et.als. v. Alejandro Buitrago Hospital, Civil Number 99-2345. (Appendix A).

Unpublished Judgment of the U.S. District Court, District of Puerto Rico under Civil number 99-1624 (DRD). (Appendix B)

Unpublished resolution of the Supreme Court of Puerto Rico (not published) can be found in Succesión Cecilio Huertas vs. Hospital Alejandro Buitrago, Civil Number CC1999-0373. (Appendix C).

The Opinion of the Circuit Court of Appeals, for the District of Puerto Rico, also not published can be found in Succession Cecilio Huertas vs. Hospital Alejandro Buitrago, Case Number KLAN1998-01438. (Appendix D)

Lastly, the Court of First Instance, Superior Part of Guayama entered its final judgment on October 20,1998 in the case of Succession Cecilio Huertas vs. Hospital Alejandro Buitrago, Civil Number GDP1988-2291. (Appendix E).

STATEMENT OF JURISDICTION

Petitioner respectfully invokes the jurisdiction of this Honorable Court under Article III, Section 2 of the Constitution of United States of America and under Title 28 USCA 1251, et.al. to review a judgment entered and notified by the United States Court of Appeal, whereby a federal question under the Fourteenth Admendment presented; said judgment was entered on November 7, 2000, and notified in November 7, 2000.

Jurisdiction is sought, for there are grave constitutional violations under the Fourteenth Amendment, by a state law which infringes upon the fundamental right of its citizens with respect life, limb and livelihood, as express both in the Due Process Clause and the Equal Protection Clause of said amendments.

Petitioners respectfully understands that the Eleventh Amendment Immunity is not applicable in the present case when fundamental violation of the Fifth and Fourtheen Admendment occurr. Moreover, in the present case, a state complaint seeking damages was filed and judgment was entered by the State Court: Court of First Instance, Superior Division of Guayama, Puerto Rico. (See Appendix C).

Said trial court's judgment declared unconstitutional Section 3077 (a) of Title 32 of Laws of Puerto Rico anotated. For this reason alone the Eleventh Admedment is not applicable for a judicial determination against the Commonwealth of Puerto Rico was entered.

The sole reason for bringing a federal suit, as a declaratory judgment, before the U.S. District Court was to declare unconstitutional, as a matter of federal question, Section 3077 (a), supra, for it violates both the Fifth and Fourtheenth Admedment. This federal action was filed during the appelate procedure before the Puerto Rico Supreme Court of Puerto Rico (Appendix C) and after the Circuit Court of the Commonwealth of Puerto Rico entered its judgment whereby it revoked the Trial Court determination which declared Section 3077 (a) unconstitutional (Appendix D). See complaint filed before the U.S. District Court of Puerto Rico under Civil number 99-1624 (DRD) (Appendix F). Thus, to file said complaint earlier at trial level could be considered moot and premature.

Therefore, petitioners seeked a declaratory judgment, and its appellate review, with respect to the applicable federal constitutional doctrine under the United States of Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the Constitution of United States provides in its relevant part:

> "No person shall be deprived of life, liberty of property, without due process of law; nor shall private property be taken for public use, without just compensation." (Emphasis Supplied)

The Fourteenth Amendment of the Constitution of United State provides in Section 1, the following:

> "Section 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis supplied)

Article II, Section 7 of the Constitution of the Commonwealth of Puerto Rico provide in relevant part:

> "7. Right to life, liberty, and enjoyment of property; no death penalty; due process; equal protection of laws;

impairment of contracts; exemption of property from attachment

The right to life, liberty and the enjoyment of property is recognized as a fundamental right of man. No person shall be deprived of his liberty or property without due process of law. No person in Puerto Rico shall be denied the equal protection of the laws." (Emphasis supplied)

Article 2 (a) of the Law of Claims against the State (32 LPRA 3077 (a) States in its relevant part:

"(a) Actions for damages to a person or property up to the sum of seventy-five thousand (75,000) dollars caused by a culpable or negligent act or omission of any official, agent, or employee of the Commonwealth, or of any other person acting in an official capacity within the scope of his duty, office, or employment. Where such action or omission causes injury to more than one person, or where a single injured party is entitled to several causes of action, the compensation for damages caused by such action or omission shall not exceed the sum of one hundred and fifty thousand (150,000) dollars.

STATEMENT OF THE CASE

A. MAIN FACTS

The tragic facts of this prolonged case date back to 1988[2]. At the time, the Santos Huertas and Julia Laboy were happily married for more than thirty (30) years. During their marriage they procreated and raised fourteen (14) children in the rural area of Patillas, Puerto Rico. Both Julia Laboy and Santos Huertas were healthy and proud couple, whom had their children in a humble but righteous way. Mrs. Julia Laboy was a housewife while Santos Huertas was a sugarcane farmer.

On or around September 1988, Julia Laboy visited Dr. Luis Rodríguez González, a private gynecologist, who had his office in Guayama, Puerto Rico. After a clinical evaluation in his office, Dr. Rodríguez recommended a hysterectomy. This elective surgery was performed on September 24, 1988 at the Alejandro Buitrago Hospital, a state run hospital located at Guayama Puerto Rico.[3]

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[2] The Court of First Instance in its judgment, illustrates the tragic miscarriage of justice for its took almost ten years to solve the present case not withstanding the fact that the codefendant Commonwealth of Puerto Rico did not offer no any voluntary compensation to the victims at the onset of the case nor any credible defense. The Commonwealth of Puerto Rico at the trial did not even present any witness nor expert witness to prove its case! (Emphasis supplied) (Appendix E)

[3] Since the Alejandro Buitrago Hospital was a state run--facitily, the Commonwealth of Puerto Rico was a proper party.

In the morning of September 25, about 8:00 A.M., Luz M. Huertas Laboy , daughter of Julia Laboy observed that her mother was cold, sweaty, weak and with great difficulty in breathing and in opening her eyes. Due to said precarious condition, Luz M. Huertas Laboy desperately requested to the nursing staff that her mother be examined by a physician. A clinical examination, by performed by a physician, other than Dr. Luis Rodríguez González, revealed a blood pressure of 90/80, and tachycardia. She was found that she also had problems in orientation. The examining physician indicated to Luz M. Huertas Laboy that her mother could be bleeding internally. Laboratories were ordered to confirm or reject these clinical findings. Later that morning the same revealed very low and dangerous levels of hemoglobin (8mg). These laboratory findings confirm that she suffered from internal bleeding. At this point in time nothing was done in said hospital . Julia Laboy was again seen by various physician around 2:04 P.M. to 7:10 P.M. During this lapse of time, Julia Laboy became weaker and she further deteriorated in her health. At midnight and early morning of September 26, 1988 and after suffering for almost thirteen (13) hours of Julia Laboy was admitted by the Dr. Nido Laracuente for a surgery for a exploratory laparactomy to determine the source of said hemorrage. A massive hemorrhage was discovered within the abdominal cavity with a laceration to her spleen. Dr. Rodríguez González never appeared.

Once surgery was concluded, Mrs. Julia Laboy was admitted to the intensive care unit for

her medical condition was extremily serious and catastrophic. To make matters worse, there was no compatible blood available at Alejandro Buitrago Hospital´s blood bank. Numerous phone contacts to obtain blood compatible with Julia Laboy Rosa were made. However, the same were too late and around 8:00 A.M., Julia Laboy Rosa died. Upon her death, doctor Francisco J. Landron, a forensic pathologist, performed a autopsy which revealed that the cause of death was due to massive internal hemorrhage due to a laceration of the spleen.

B. TRIAL COURT PROCEEDING:

On 1988, a malpractice complaint was filed whereby Petitioners claiming mental and moral damages for the wrongful death of their mother. After numerous procedural discovery proceeding, various pre-trial hearings and a delay attributed to defendants, (specifically the Commonwealth of Puerto Rico), a trial date was set on March, 1998, almost 10 years of Mrs. Julia Laboy's, death.

Expert testimony by Dr. Vicent Wade Master, a board qualified gynecologist- obstetrician, demostrated that the mismanagement of Mr. Julia Laboy Rosa´s operation and post surgical procedures. He testified that negligence existed in the following areas:

First, the surgery performed was not the appropiate one; instead of a vaginal hysterectomy procedure, an open laparactomy was performed this brought the laceration of spleen. Second, Alejandro Buitrago Hospital´s personnel fail to request and obtain sufficient blood as part of presurgical

procedures, in case that an emergency could occurr (Mrs. Julia Laboy Rosa died of a hypovolemic shock due to lack of blood). Third, investigation on the medical record revealed that Alejandro Buitrago Hospital's failed to promptly execute emergency laparoctomy in order stem the loss of blood. Fourth, no objective diagnostic tests such as a sonogram or computarized tomography that could evidence abdominal internal bleeding.

At said trial, the codefendant Commonwealth of Puerto Rico did not present any expert witness to challenge the findings of Dr. Masters nor any lay witness. All the plaintiff testified, with the exception of Mateo Huertas Laboy, who had become mentally disabled due to the death of his parents. The trial court concluded that the plaintiffs' testimony were genuine, real, serious and undismissable. The trial judge noted the Plaintiffs' tears, patent sadness and anguish. Specifically, the Court noted the uncontainable tears of Santos Huertas Laboy, the elderst sibling, when he testified to the Court that he had to assume the role of a parent at a early age. The Court also noted Dr. Nido Laracuente, detail testimony who felt incapable of saving Julia Laboy Rosa life, due to lack an adequate blood supply.

C. PROCEEDINGS AFTER THE TRIAL:

On the basis of said evidence, the trial court rendered a final judgment whereby it granted compensation to each plaitniff in the amount of $100,000.00 for the wrongful death of her mother. Moreover, it granted an additional amount of $280,000.000 in compensation for the horrendous

death, of Mrs. Julia Laboy Rosa, who was forced to be bloodless for a full day. (Appendix E) The total awarded amount was $1,680,000.00.

In granting said damages, the trial court declared unconstitutional Article 2 (a) Public Law Number 104 of 1955, populary known as Law of Litigation against the State, (32 LPRA section 3077 (a)) which limits the liability of the Commonwealth of Puerto Rico to the maximun amount of $150,000.00, per occurrence. In its judgment, the Court stated that said law violates both Due Process clause and Equal Protection clause for said Act grants the Commonwealth of Puerto Rico excesive privileges and rights as a litigant; and thus, justice and equity could not be properly served. The court expressed that the $150,000.00 limits in damages could not be adequate enough to compensate for the wrongfull death of Julia Laboy Rosa, and all the anguish and suffering to her children.

D. PROCEEDINGS IN APPEAL AT STATE LEVEL:

On the last day to file an appeal, the Commonwealth of Puerto Rico filed before the Circuit Court of Appeals of the Commonwealth of Puerto Rico a writ of appeal, whereby it only questioned the amounts awarded for the same violated Law Number 104 of 1955, which limits the amount to be awarded, per occurrence, in any claim made against the Commonwealth of Puerto Rico to $150,000.00, per event. A reply brief and/or reconsideration was filed by plaintiff, however the Circuit Court modified the judgment by reducing and limiting the amount of compensation that for

only Commonwealth of Puerto Rico can be liable: $150,000.00. However, the Circuit Court did not disturbed the findings of the trial court regarding the damages granted to each Plaintiffs. It should be noted that the damages granted were only lowered for codefendant Commonwealth of Puerto Rico, but not for other codefendants, such as. Doctor Luis Rodríguez González. This modification was done, notwithstanding the fact that, Commonwealth of Puerto Rico was extremely negligent and jointly responsible for the death of Julia Laboy Rosa. (See Appendix B)[4]

On May 17, 1999, Plaintiffs filed a writ of certiorari before the Supreme Court of Puerto Rico, whereby it requested that the Circuit Court's judgment be reversed and that Law Number 105 of 1955, be declared unconstitutional for it violated the Due Process Clause and the Equal Protection Clause. On October 13, 1999, the Supreme Court of Puerto Rico denied certiorari notwithstanding the constitutional arguments (Appendix A). However one of the Associate Justices, of said court, Mr. Fuste Berlingeri, could have granted the issurance of writ of certiorari. A motion of reconsideration was filed on October 29, 1999; however, the same was denied on November 23, 1999. (Appendix A-2).

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[4] The Circuit Court of Appeal states that there was only one defendant namely Commonwealth of Puerto Rico. However, this is erroneous, for doctor Luis Rodríguez González was also found negligence and the judgment award by trial court was joint and severally not exclusively to the Commonwealth of Puerto Rico as said court erroneously interprets. However said physician has no economic capacity to compensate for said damages nor insurance coverage to act upon the same.

E. PROCEEDINGS BEFORE THE U.S. DISTRICT COURT AND U.S. COURT OF APPEALS

Immediately after the modification of the trial court's judgment by Circuit Court of Appeals of Puerto Rico, pertaining only the amount that codefendant Commonwealth of Puerto Rico could be liable, the Plaintiffs in this case filed a complaint, in the nature of a declaratory judgment, before the U.S. District Court, (Exhibit F). Said action seeked to declare unconstitutional Section 3077 (a), supra, for it also violated the Equal Protection Clause and Due Process Clause under the United States Constitution. A motion for dismissal was filed by Defendant Commonwealth of Puerto Rico thereby requesting dismissal under the Eleventh Amendment 's doctrine. In reply, plaintiff stated that said doctrine is not applicable when a party seeks as a declaratory judgment remedy to declare unconstitutional a statute which in its face violates the United States Constitution and the fundamental rights of a person. Judgment was entered thereby dismissing the complaint under the Eleventh Amendment doctrine relating to state immunity to be sued. (Appendix B). A timely appeal was filed before the U.S. Court of Appeal for the First Circuit, and after the parties filed their corresponding brief, the court notified its judgment on November 7, 2000, thereby denying the appeal on the sole ground that the federal courts lack jurisdiction in this matter under *Rooker v. Fidelity Trust, Co.* 263 U.S. 413, *District of Columbia Court of Appeals, et.al. v. Feldman, et.al.* 460 U.S. 462, 476. See Appendix A.

A disparity of grounds for jurisdictional dismissal on each judgment is clearly found.

REASONS TO GRANT THE WRIT OF CERTIORARI

A. Introduction:

The predicated Federal Constitutional issue, in the instant case raised by petitioners, among others, and as a matter of first impression and probably never before address by this Honorable Court, can be express as follow:

If the citizens of a state, whom are deprived of their life, limb, and welfare, and whom have suffered in their livelihood, as a consequence of culpable and negligent actions and/or omissions by Commonwealth of Puerto Rico, have a fundamental constitutional right to receive full and reasonable compensation, under Due Process and Equal Protection Clauses as expressed by the Fifth and Fourteenth Amendments. Opposed to this criteria, is the doctrine of sovereign immunity, established by an ordinary statute whereby the maximum aggregate amount in damages payable by the Commonwealth of Puerto Rico is limited to $150,000; notwithstanding the fact, that the damages in said occurrence and awarded by the trial court exceeded $1,680,000.00. Petitioners believe that this statute in limiting the amount of liability of a state is unreasonable, arbitrary and constitutionally unsound. Moreover, said statute has no constitutional grounds. The doctrine of sovereign immunity was created by judicial fiat in the United States Statutes; and later on, enacted as an ordinary

law. No constitutional provision exits to uphold the doctrine of sovereign immunity.

Furthermore, the partial compensation, as reduced by the Circuit Court of Appeal, is contrary to due process and equal protection, for it abridges and infringes the life, limb, property, welfare and livelihood of its citizens.

Moreover, Public Law Number 104, June 29, 1955, (32 LPRA 3077 et.seq.) Art. 2 (a) and (c) and 7, does not meet the compelling state interests and strict scrutiny standard of review, under the Due Process and Equal Protection Clauses of the Fourteenth Amendment of Constitution of United States. *Nibbia v. New York*, 1934, 291 U.S.A.-502

In addition, Public Law 104, is facially unconstitutional, for it violates the "taking clause" under the Fifth Amendment solely, or as incorporated into the Fourteenth Amendment. *Eastern Enterprises v. Apfels*, 118 S. CT 2131, P. 2146.

It should be noted that the Commonwealth of Puerto Rico throughout this case, including the state appeal process did not ask for a review of the factual findings or terms of the trial courts judgment entered against the defendants which amounted to $1,680,000.00 with legal interest, cost and expenses. The only issue contested by the Commonwealth of Puerto Rico, in the Circuit Court of Appeals of Puerto Rico, was the determination by the trial court which declare unconstitutional Article 2 (a) and 7 of Public Law 104, as amended, (32 LPRA 3077(A)). Said article limits the responsibility of the Commonwealth to $150,000.00 per occurrence and to $75,000.00

per person per occurrence. In its writ of appeal to the Circuit Court of Appeals, the Commonwealth of Puerto Rico does not the challenges the damages awarded to each co-plaintiff. In said proceeding, the Commonwealth only requests that the amount awarded, be reduced to the limit set forth in article 2 (a), supra, and solely to the state. Therefore, the rest of the defendants must meet the burden in paying full damages awarded to all plaintiffs. *United States of America v. Winstar, Corp.* (1976), 116 S. CT. 2431. (Emphasis supplied). Therefore, in terms monetary compensation awarded, the state will only pay 8.9% of the entire judgment while the rest of the Defendants will have to pay 91.1% of the judgment. This is unfair and grossly disproportional if we take into consideration that the Commonwealth of Puerto Rico was the principal culprit of the death of Julia Laboy. Thus, Article 2 (a), (Section 3077 (a), supra) is prima facie unconstitutional for it violates the Equal Protection clause among the defendants whereby one is granted a special privilege status over the others.

B. State and Federal Predicates:

The United States of America has a legal tradition, rooted in its vast jurisprudence and laws, that any party has a right to sue before the Courts in order to seek reasonable compensation for any culpable and/or negligent conduct committed by party who has caused damages. *Boodie v. Connecticut*, 401 US 327; *Logan v. Zimmerman Brush, Co.*, 455 US 422, 430. The Commonwealth of Puerto Rico has incorporated and codified this basic principle of constitutional lineage as a corner stone

of its legal system in Article 1802 and 1803 of Civil Code of Puerto Rico (31 LPRA 5142 and 5143).[5]

The monarchic and anachronistic legal concept that the "King can do no wrong" is still underlined in Public Law 104 of 1955 as amended, supra. Said act is not only unsound and oppressive but it not grounded in any historical, philosophical or legal justification[6]. Moreover said act, has no place in a democratic constitutional systems, in which sovereignty emanates from the People; and particularly unsound, in the case of the constitutional system of United States and Puerto Rico, whereby State is subordinated to its Citizens. Another cardinal principle established in both Constitutions of Commonwealth of Puerto Rico and/or the United States is the concept that economic values are subordinate to human values.[7]

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[5] Vda. de Delgado v. Boston Insurance, 101 DPR 598

[6] The concept of sovereign immunity passed on from England to United States. There are many schoolar that sustained that incorporating of this doctrine in the American legal systems is a mystery due to the lack of historical and philosophical justification for it. See J.D. Lee and B.A. Lindahl, MODERN TORT LAW: LIABILITY AND LITIGATION, ILLINOIS, --CALAGHAN AND COMPANY, 1988, Vol. I, sec.16.01, page 553; The position of the majority of scholars sustained that's historical reasons for the states acceptances of the sovereign immunity doctrine was to avoid judicial collection of the --sustancial amount of -debts incurred by the states during the independence war. See Harper, James and Gray, "THE LAW OF TORTS", Boston, Little, Brown and Company 2 ed, 1986, Vol.5,page 596; -Jaffe, SUITS AGAINST GOVERNMENTS AND OFFICERS: SOVEREIGN IMMUNITY, 77 Harv. L. Rev. 1, 2-19 (1963).

[7] Commonwealth Constitution Preamble: We understand that the democratic system of government is one in which the

C. Fundamental Rights:

The Supreme Court of the Commonwealth of P.R. has consistantly held that the right to filed a cause of action for damages cause by tort feasor is defined as "property". See abundant case law: *Vda de Delgado v. Insurance Co.* 101 DPR 598 (1973); *Publio Díaz v. E.L.A.*, 106 DPR 854 (1978).

Article II, Section 7 of the Bill of Rights of the Constitutional of the Commonwealth of Puerto Rico provides in its relevant parts that:

> "The right to life, liberty and the enjoyment of property is recognized as a fundamental right of man."

These fundamental rights are also incorporated in the Constitution of the United States in its Preamble as well as within the meaning of the Fifth and Fourteenth Amendment, although not in a clear cut manner as in Article II, Sec.7, of the Commonwealth of Puerto Rico.

Moreover, these fundamental rights are federalized, due to the unique creation of the Commonwealth of Puerto Rico and its constitution as approved by Congress. See Public Law 600, 81 Congress, July 3, 1950, c 446, 64 Stat 314; which established the Commonwealth; and the Joint Resolution of Congress of July 3, 1952, C567, 66 Stat 327, which ratified the Constitution of Commonwealth of Puerto Rico. Thus, the citizens and residents of the Commonwealth of Puerto Rico enjoy these fundamental rights both at state and

will of the people is the source of public power, the political order is subordinate to the rights of man, and the free participation of the citizen in collective decisions is assured), Article 1, sec.2.

federal level. Therefore, fundamental rights as clearly expressed in the Constitution of Commonwealth of Puerto Rico are federalized rights due to this unique Joint Compact between Congress and the People of Puerto Rico. See Mora v. Mejías, (1953), 206 F2d 371, for more elaborate historical interpretation of the creation of the Commonwealth of Puerto Rico and its Constitution.

Petitioners believe that the doctrine of sovereign immunity as expressed in Article II (a), supra, affects the fundamental rights under Article II, Sec. 7 of Commonwealth of Puerto Rico, and as well under the Fourteenth and Fifth Amendment of the Constitution of United states of America. Therefore, a genuine federal question exists before this Honorable Court, who is empowered and has jurisdiction to enter and resolve the questions presented in this writ. Petitioners believe that the Eleventh Amendment bar does not apply in this case for there are various prima facie Fourteenth Amendment violations by the Commonwealth of Puerto Rico when it enacted Law 104 of 1955, specifically, Article II (a), of said act (32 LPRA 3077 (a))

D. Equal Protection and Due Process Analysis:

The Commonwealth of Puerto Rico expressly violated the Fourteenth Amendment when its legislative branch enacted Article 2 (a), which deprived its citizens and residents their fundamental rights as expressed in both constitutional documents. Petitioners believe that said Act infringes

and abridges their privileges. The following constitutional rights are affected:

a. The right to sue and appear before a Court of Justice in order to seek redress of their grievances to its fullest.

b. The right to enjoy life, property and the pursuant of livelihood.

c. The right to receive just compensation for property taken or used by the state.

Professor Tribe has eloquently pointed out that the right to sue is a fundamental right and we cite:

> ...Second, and more intrinsic to the concept of equal protection, the inequalities may impinge directly on access to, or levels of, a right deemed fundamental in the specific sense that departures from equality in its availability or enjoyment are suspect. Such inequalities are particularly injurious when they interfere with either of the two major sources of political and legal legitimacy namely, voting and litigating--or with the exercise of intimate personal choices." Tribe, Lawrence, American Constitutional Law, p.1002. See also Boddie v. Conneticut,401 U.S. 37.(Emphasis supplied)

Taking said judicial concept, the Supreme Court of Puerto Rico both in Torres v. Castillo, 111 DPR 792, at pages 801-802 and Alicea v. Córdova, 117 DPR 676, have stated that "the right to

commence a civil action is a fundamental right and that any legislative classification affecting such right will have to withstand the strict judicial scrutiny analysis. Therefore, to limit the amount a person may sue and to seek reddress for its real damages, constitute a patent infringment of this fundamental right. In order words, a constitutional violation exists when a person has the right to sue but the same is grossly limited to a particular amount (in this case up to the amount of $150,000.00) notwithstanding the real fact that said person's real damages exceed $1,680,000.00, as assessed by a competent trial court.

Second, Petitioners respectfully understand that Article 2 (a) infringes in the right to enjoy life, property and livelihood. Said Act seriously restricts and affects the full and reasonable compensation the State should provide for the loss of life, limb, property and livelihood suffered by an aggrieved party. This is extremely evident in the case at bar, when plaintiff suffered the loss of both parents due to the gross negligence or conduct of the Commonwealth of Puerto Rico, it employees, officers and/or agents. These damages, not challenged directly by the state in its appeal, were awarded in the amount of $1,680,000.00; however the same were substantially reduced by the sole operation of Article 2 (a) supra, to the amount of $150,000.00. Therefore, plaintiff did not received full and adequate compensation; and therefore, justice was never duly and fully served. It was fustrated with a patent violation of the Fourteenth Amendment.

Third, Plaintiff respectfully request that Article 2 (a) be stricked down for it confiscatory in its nature; and thus, violative of both Fifth Amendment and Fourteenth. Petitioners agree that said Article creates a taking by the state without due compensation. This taking clearly affects the role of the judicial branch , which have the difficult and fundamental task in evaluating the real damages suffers by an aggrieved party. Article 2 (a) creates a constitutional clash between two branches of government, mainly the legislative and the judicial branch. The legislature has created in Articles 2 (a), a ceiling up to $150,000.00 per aggregate occurrence; while the judicial branch in its role as provider of true justice, now must reluctanly accept said unconstitutional ceiling notwithstanding the fact that the real damages exceed said limit. Thus, petitioner will be never fully compensated as well as any other person living in Puerto Rico who may become a victim of state negligence. Therefore, a travesty of justice occurs when full and reasonable compensation is negated by the state to its citizens who have been wronged by its negligence.

E. Other Due Process and
Equal Protection Considerations:

Also Due Process and Equal Protection Clause violated on the following areas:

First, Public Law 104 prohibits imposition of sanctions or legal interest against the state for its indifference and lack of due diligence in litigation before the Courts. As express by the trial court in

its judgment, it took more than 10 years to litigate a case in which the Commonwealth of Puerto Rico had no credible defense nor evidence. Moreover, the Commonwealth of Puerto Rico not even tendered any offer throughout the course of litigation of this case to the victims of its horrendous and gross negligence. It just sat back and became a passive litigant with no compelling interest to promptly resolve this case. Therefore, the law is per se in an open violation of procedural due process which requires not only a fair trial but a speedy one.

Public Law 104, creates a special class of litigant in violation of Equal Protection Clause, said act prohibits the imposition of attorney fees and or interest for the temerity of the Commonwealth of Puerto Rico, due to its lack of prosecution before the courts. Obviously, again we find that minimum procedural due process considerations are not meet. Moreover, again there is a violation under the Equal Protection Clause for it creates a special type of litigant before the Courts of Justice. Presently, the Commonwealth of Puerto Rico can not be sanctioned for its incompetence as a litigant. However, an ordinary citizen of the Commonwealth of Puerto Rico could suffer sanction and/or penalties in the form of attorneys fees or interest for untimely diligence or due to its inaction and/or omission is not complying with the orders and/or resolutions of the trial court. Again we find a violation of both Equal Protection and Due Process clauses.

Lastly, the Fourteenth Amendment was enacted and ratified to preserve the Union; and also to prohibit any other form of government. At the

time of its enactment, the United States of America was gravely suffering from the crucibles of a Civil War. The Southern States formed the Confederacy; and established an independent nation under the Articles of Confederation. More important, said Confederacy promoted the preservation of slavery as a form of property with all its grave and inhumane consequences.[8] Therefore, the Fourteenth Amendment expressly prohibits the enactment of any law (including any state constitutional and ordinary disposition), that abrogates or infringes in the privileges and immunity of any citizen of the United States. Therefore, the preservation of fundamental rights (Bill of Rights) as well as the present Republican form of government are paramount not only at the federal level but at the state level. Taking this analysis to the case at bar, Public Law 104, specifically Article 2 (a), creates another form of government to the citizens and residents of the Commonwealth of Puerto Rico. By incorporating the sovereign immunity doctrine, the Commonwealth of Puerto Rico has become in certain way an absolute monarch: whereby the "King can do no wrong". In setting the limits of $150,000.00 in the aggregate occurrence as well as granting other special consideration, supra, the Commonwealth of Puerto Rico is proclaiming itself that the absolute monarchic doctrine whereby in real damages payable by the state that may not exceed $150,000.00. Thus

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[8] The Thirteenth Amendment prohibits slavery and any form thereof. This Amendment was the precursor of the Fourteenth Amendment which is the cornerstone of our present civil rights. --

Commonwealth of Puerto Rico is therefore immune in paying full and compensatory damage after $150,000.00. Therefore, any serious and grave harm committed by the state (over $150,000.00), the Commonwealth of Puerto Rico, has becomes equated to a King: It can not do any harm over $150,000.00 in damages. This by extension violates the present Republican form of government as conceived by Fathers of our Constitution as well as the creators of the Constitution of Commonwealth of Puerto Rico. (i.e. Congress, as per Congress Public Law 600, supra.)

This is constitutionally unacceptable; for it creates a different type of government structure not envisioned by our founding fathers. [9] Therefore Petitioners respectfully moves and request to this Honorable Court, that the doctrine of sovereign immunity (as embedded in Article 2 (a)) be declare unconstitutional for it creates another form of government.

F. Compelling State Interest Argument:

The Commonwealth of Puerto Rico in its writ of appeal before the Circuit Court of Appeals, specifically states, in citing *Defendini Collazo v. E.L.A.* 134 DPR 28, that there are two basic

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[9] It should be noted that the United States of America has no limits in liability for tort actions it may produce to its citizens. This is also the situation on the majority of the states of the union. Therefore, Petitioners believe that there is a compelling national interest to resolve the sovereign immunity doctrine by this Honorable Court.

compelling state interest to declare constitutional Article 2 (a), to wit: a. That the payment of huge amount in damages awards could represent a grave risk to the public finances of the Commonwealth of Puerto Rico for could affect basic public services. (b). That the best method to grant compensation to its citizens is the current method adapted by the legislative, in order to protect the state from frivolous actions and its state treasury. (i.e. set a fix amount).

Petitioners at bar respectfully disagree on both counts: First, when *Defendini v. E.L.A.*, supra, was published, the judgments against the state where a small fraction of the entire fiscal budget. The public funds used for the payment of judgment when Article 2 (a) was amendment in 1982, represented only 0.14% of the total public funds paid by the Commonwealth of Puerto Rico of the approximately $13.7 billion dollars budget payment of the Commonwealth of Puerto Rico, only approximately $5.7 millions were paid as judgments due to Commonwealth of Puerto Rico negligence. However, the state could be more efficient by insuring the public risks and also creating safety controls and/or educating its officials. Under the modern theory of government, the state should act more efficiently in running its affairs.

Second, the method use to limit liability, i.e. a to fix amount per aggregate occurrence, is not the best method for it creates and promotes the following: a) A sense of injustice between the state and its citizens; b) Creates a sense of inequity and disquilibrium between the victims and the perpetrators of the negligence; c) Promotes a

condition whereby the economic values to be protected (i.e. the state public treasury) are above and beyond the fundamental rights of the citizens of a state. This inequity goes contrary to the Preamble of the Constitution of United States of America as well as that of the Constitution of Commonwealth of Puerto Rico; d) Article 2 (a) promotes a confiscatory tax in favor of the state when the victims of a state action are only granted 8.9% of the awarded damages. In equity and justice, the victims of a state wrongdoing should be fully compensated in their damages; and not partially Article 2 (a) is extremely confiscatory and violative of the Fifth Amendment provision regarding "taking".

Therefore, the Commonwealth of Puerto Rico should be held accountable for the real damages it has produce; and it must fully compensate the victims of its negligence. Article 2 (a) only purpose is to shift back or redistribute said damages either to the People of Puerto Rico as a whole or to the victims of said state negligence or worse to another co-defendant.

G. Compelling Reasons To Grant Certiorari:

Although review on a writ of certiorari is not a matter of right, but of judicial discretion, the case at bar has three main compelling reasons whereby review should be granted and as previously explained. We respectfully summarize them as follows:

a. Petitioners respectfully move this Honorable Court to grant review under Due Process Clause of the Fifth and Fourteenth Amendment of the United States Constitution which guarantees as a fundamental right life, property and livelihood of its citizens; and any statute (such as Article 2 (a), supra), which limits full, just and adequate compensation for the loss of life, limb and/or livelihood of its citizens, should be declared unconstitutional, supra.

b. Again Petitioners respectfully move this Honorable Court to grant review for Article 2 (a) in its application creates a special privilege status for the Commonwealth of Puerto Rico over other litigants as well as said act establishes a discriminatory and arbitrary immunity which directly violates the Equal Protection Clause as previously explained.

c. Moreover, petitioners respectfully believe that Article 2 (a) is clearly confiscatory and violates both the Fifth and Fourteenth Amendment of the United States Constitution for it reduces or takes away just and adequate compensation in an arbitrary and unreasonable manner from that established by a competent court.

Petitioners move this Honorable Court for there are a minority of state jurisdictions which also have partial sovereign inmunity; and the same are contrary to said fundamental constitutional concepts.

H. Jurisdictional Matters:

As previously stated, both the U.S. District Court and the U.S. Court of Appeal have dismissed

the present action on two different jurisdictional grounds namely: One under the Eleventh Amendment's state immunity doctrine; and the other under *Rooker v. Fidelity Trust, Co*, supra, case law doctrine regarding the scope and jurisdiction of the U.S. District Court, Appendix A and B.

However, the present request for declaratory judgment should be clearly distinguished from said doctrines on the following grounds:

First, the present case does not pretend to relitigate the facts and cause of action before the state trial court. On the contrary, it only seeks to reestablish the trial court judgment by declaring unconstitutional Section 3077 (a) for it violates fundamental rights granted by U.S. Constitution, supra and those federalized rights under the Constitution of the Commonwealth of Puerto Rico.

Second, the remedy seeked before the U.S. District Court is in the nature of a declaratory judgment, which seek the annulment of Section 3077 (a) for it violates fundamental rights of Plaintiff. Plaintiff respectfully understand that the Federal Courts have jurisdiction in matters concerning the violation of fundamental rights granted by the U.S. Constitution; and that a complaint filed as a declaratory judgment may prosper. It should be noted that the complaint was filed **after** the state trial court declare unconstitutional Section 3077 (a). Petitioners never challenge said finding until the Circuit Court of Appeals of Commonwealth of Puerto Rico revised the judgment regarding the constitutionality of Section 3077 (a). Said appellate judgment was entered on

October 27, 1999, while the complaint before the U.S. District Court was filed on June 4 1999. (Appendix F). To file said complaint before the date of Appellate judgment was entered could be considered moot and untimely.

Again Petitioner requested that federal jurisdiction be accepted by this Honorable Court for a grave violation of federal fundamental rights exists.

CONCLUSION

This case presents a question of exceptional national importance: Whether the doctrine of sovereign immunity, as expressed in Article 2 (a), supra, should prevail in light of the various violations of Fourteenth Amendment in relation to Due Process and Equal Protection Clauses. If the resolution of the Supreme Court of Puerto Rico as well as the opinion of the Circuit Court of Appeals of Puerto Rico is let to stand, a grave injustice will be permitted, the Petitioners will be never fully compensated in their damages; and all the citizens of the Commonwealth of Puerto Rico will be at the mercy of a statute (Article 2 (a) supra) which denies full and reasonable compensation to the victims of the gross negligence of the Commonwealth of Puerto Rico. To revoke both appellate state courts judgments and reinstate the original judgment of the Court of First Instance (i.e. the trial court), will bring forward a more equitable and just system in favor of all the persons who may suffered damages incurred by the Commonwealth of Puerto Rico. The limitation establish by Article 2 (a) is not in accordance with

our times nor our constitutional systems whereby the fundamental rights of a person are over the interest of the State.

Accordingly Petitioners respectfully request that their petition of Certiorari be granted.

RESPECTFULLY SUBMITTED.

CERTIFICATION: I hereby certified that in this date notified this document at: Griselle González, Federal Litigation Division, Depto. of Justice, PO Box 9020192, San Juan, Puerto Rico 00902-0192.

In San Juan, Puerto Rico at 6 days of April of 2001.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 99-2345

SUNC. CECILIO HUERTAS BARBOSA, ET. AL.
Plaintiffs, Apppellants

v.

ALEJANDRO BUITRAGO, HOSPITAL
Defendant, Appellee

Before

Stahl, Circuit Judge,
Campbell and Bownes, Senior Circuit Judges

JUDGMENT
Entered: November 7, 2000

After a thorough review of the record and of the parties' submissions, we affirm on the sole ground that the federal courts lack jurisdiction in this matter under District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983), and Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). See Sheehan v. Marr, 207 F.3d 35, 40 (1st Cir. 1999) (federal court lacks jurisdiction to review constitutional challenge "if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it") (quotation marks and citation omitted); Howell v. Supreme Court of Texas, 885 F. 2d 308, 312 (5th Cir. 1989) ("Because [appellant] did raise his [Constitutional] claim in the state court, allowing a new challenge in federal district court would necessarily require

review of a final state court judgment."). The appellee's motion for stay is denied as moot.

Affirmed. 1st Cir. Loc. R. 27 (c).

By the Court:
PHOEBE MORSE
Clerk.

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

SUNC. CECILIO HUERTAS BARBOSA, et.al.,

CASE NUM. 99-1624 (DRD)

v.

COMMONWEALTH OF PUERTO RICO

ORDER

MOTION	RULING
Date Filed: August 27, 1999 **Docket # 3** **[ ] Plff [X] Deft [ ]Other** **Title:** Motion To Dismiss	**GRANTED.** The Eleventh Amendment clearly **bars suit** against the Commonwealth of Puerto Rico. See e.g. Castro v. Commonwealth of P.R., 43 F. Supp 2d 186 (D.P.R.1999). Furthermore, an appeal is pending before the Supreme Court of Puerto Rico. Wherefore, this case is **Dismissed.** Judgment shall be entered accordingly. IT IS SO ORDERED

(Signed)

Date: **October 19, 1999** **DANIEL R. DOMINGUEZ**
U.S. District Judge

JUDGMENT

MOTION	RULING
Date Filed: August 27, 1999 **Docket # 3**	In accordance with the Order of this same date, this case is **DISMISSED.**

[ ] Plff [X] Deft [ ] Other
Title: Motion To Dismiss

IT IS SO ADJUDGED AND DECREED.

(Signed)

Date: October 19, 1999

DANIEL R. DOMINGUEZ
U.S. District Judge

Rec'd: **EOD:**

By: # 9

Exhibit B

THE SUPREME COURT OF PUERTO RICO

SUCN. CECILIO HUERTAS BARBOSA, et.als. **PLAINTIFF- PETITIONER** Vs. HOSPITAL ALEJANDRO BUITRAGO,ET. ALS. **DEFENDANTS - RESPONDANTS**	CASE NUM.CCC-1999-373 **CERTIORARI**

Rafael Oliveras López de Victoria, Esquire,
Asociacion de Maestros Building, office 609
452 Ponce De León Avenue,
San Juan, Puerto Rico 00918

NOTIFICATION

I hereby certify that in relation to the petition of certiorari the court dictated the accompany resolution:

Sigfredo Rodríguez Isaac, Attorney General
PO Box 9020192,
San Juan, Puerto Rico 00902-0192

San Juan, Puerto Rico, October 13, 1999.

signed
Isabel Llompart Zeno
Clerk of the Supreme Court

Exhibit C

THE SUPREME COURT OF PUERTO RICO

SUCN. CECILIO HUERTAS BARBOSA, et.als. **PLAINTIFF- PETITIONER** Vs. HOSPITAL ALEJANDRO BUITRAGO,ET. ALS. **DEFENDANTS - RESPONDANTS**	CASE NUM.CCC-1999-373 **CERTIORARI**

RESOLUTION

San Juan, Puerto Rico, October 8, 1999.

To the petition of Certiorari, not granted.

Accorded by the Court and certified by the Secretary of the Supreme Court. The Associate Judge Mr. Fuster Berlingeri will grant certiorari to reexamine the constitutionality of the law. The presiding Judge Mr. Andreu García and Associate Judge Mr. Corrada Del Río did not intervene.

Isabel Llompart Zeno
Clerk of the Supreme Court

THE SUPREME COURT OF PUERTO RICO

SUCN. CECILIO HUERTAS BARBOSA, et.als. **PLAINTIFF- PETITIONER** Vs. HOSPITAL ALEJANDRO BUITRAGO,ET. ALS. **DEFENDANTS - RESPONDANTS**	CASE NUM.CCC-1999-373 **CERTIORARI**

Rafael Oliveras López de Victoria, Esquire,
Asociacion de Maestros Building, office 609
452 Ponce De León Avenue,
San Juan, Puerto Rico 00918

NOTIFICATION

I hereby certify that in relation to the petition of certiorari the court dictated the accompany resolution:

Sigfredo Rodríguez Isaac, Attorney General
PO Box 9020192,
San Juan, Puerto Rico 00902-0192

San Juan, Puerto Rico, November 23,1999.

Isabel Llompart Zeno
Clerk of the Supreme Court

Exhibit C

THE SUPREME COURT OF PUERTO RICO

SUCN. CECILIO HUERTAS BARBOSA, et.als. **PLAINTIFF- PETITIONER** Vs. HOSPITAL ALEJANDRO BUITRAGO,ET. ALS. **DEFENDANTS - RESPONDANTS**	CASE NUM.CCC-1999-373 **CERTIORARI**

San Juan, Puerto Rico, November 18, 1999.

To the Informative Motion dated October 29, 1999, the Court takes due notice.

To the Motion requesting reconsideration, dated October 29, 1999.

Not granted.

Accorded by the Court and certified by Clerk of Supreme Court the same.

The Associated Judges Mrs. Naveira de Rondón and Mr. Fuster Berlingeri and Corrada Del Rio did not intervene.

Isabel Llompart Zeno
Clerk of the Supreme Court

THE CIRCUIT COURT OF APPEAL
OF PUERTO RICO
SUBPART GUAYAMA

SUCN. CECILIO HUERTAS BARBOSA, et.als. **PLAINTIFF- RESPONDANT** Vs. HOSPITAL ALEJANDRO BUITRAGO,ET. ALS. **DEFENDANTS - PETITIONERS**	CASE NUM.KLAN 98-01438 CIVIL REF.**GDP88-2291**

NOTIFICATIONS

The Secretary, the subscriber, notify you that his court has dictated a judgment on the alone case dated March 16, 1999, which has been duly registered and filed in the records of this case, wherein you can know the out in details the term of the case and being a representing you, the perjudicial party by the sentence, from which can established. The resource appeal, I address this notification to you, having filed in the dockets of this case copy dated March 23, 1999.

Rafael Oliveras López de Victoria, Esquire,
Asociacion de Maestros Building, office 609
452 Ponce De León Avenue,
San Juan, Puerto Rico 00918

Sigfredo Rodríguez Isaac, Attorney General
PO Box 9020192,

Exhibit D

San Juan, Puerto Rico 00902-0192

Secretary General of Guayama
PO Box 300
Guayama, Puerto Rico 00785-0300.

San Juan, Puerto Rico a, March 23, 1999.

_____

Aida Ileana Oquenda Graulau
Secretary General
For: Arlyn Molina Logroño
Auxiliary Court Secretary II

THE CIRCUIT COURT OF APPEAL
OF PUERTO RICO
SUBPART GUAYAMA

SUCN. CECILIO HUERTAS BARBOSA, et.als.
PLAINTIFF- RESPONDANT

Vs.

HOSPITAL ALEJANDRO BUITRAGO,ET. ALS.
DEFENDANTS - PETITIONERS

CASE NUM.KLAN 98-01438

CIVIL REF.**GDP88-2291**

JUDGEMENT

The panel integrated by its President Judge Pesante Martínez and the other judges Mr. Martínez Torres and Salas Solar.

Pesante Martínez, Presiding, Judge.

In San Juan, Puerto Rico, March 16, 1999.

The present appeal has its origin in a tort complaint filed by defendants due to the death of their mother caused by the negligence of the Commonwealth of Puerto Rico, the sole defendant which a trial was held or its merits. In the writ of appeal it is only questioned the amount awarded to the Plaintiff, for the same excess the limits established by Article 2 (a) of the Law of Claims against the State and the ruling by the trial court when it declare unconstitutional said Article. We revoke.

Exhibit D

Mrs.Julia Laboy, mother of the Plaintiff, was surgically operated by doctor Luis M. Rodríguez González, surgeon whho has his medical practices in Guayama, Puerto Rico. This operation was performed at the Alejandro Buitrago Hospital, an institution by the Commonwealth of Puerto Rico. The operation was an elective and was performed in order to eliminate the utherous, ovaries and liberate pelvic adherances. The day after the operation the health of Mrs. Julia's health worsend; she was sweaty, pale with the low blood pressure and presented a medical condition of posible internal bleeding. At 12:30 midnight the day after she was submitted to a exploratory laparactomy in order to determine the origin of the bleeding a massive hemorrage was found in the abdominal cavity and laceration in the spleen with a massive hematoma. At 8:00 A.M., Mrs. Julia Laboy died.

From the forensic medical report submitted by forencis patologist, Dr. Francisco J. Landron, suggested that the death was caused by a massive internal hemorrage due to a laceration on the spleen product of the first medical operation. Having examined the facts one examined completely all the facts

Examining all the evidence, the court found and concluded that the case was a clear gross negligence determined by the bad administration / handling of Mrs. Julia, pacient, was subjected to wit. (1) Dr. Rodriguez Gonzalez by realized an operation which was not the indicated one and lacerated the spleen; (2) By not administerating the post operation diagnostic tests to determine the area and extension of the internal hemorrage which she suffered; (3). By not consulting inmediately with a chief surgeon when it was realized she was hemorraging (at 10:00 a.m. of September 25, 1988) and waited almost all day and part of the night,

when Dr. Roque Nido Laracuente was called which in effect operated her inmediatly; (4) By not having blood available on time to avoid that the deceased would not die of hipovolemic shock.

Having established the gross negligence on part of the defendant, the Court found that Mrs. Julia Laboy, was intervined / operated by Dr. Luis M. Rodriguez Gonzalez, medical surgeon in Guayama. This operation took place at Alejandro Buitrago Hospital, institution where is operated, controled and administered by the Commonwealth of Puerto Rico. The operation was one of elective caracter, and managed to remove the uterus, ovaries and liberate any pelvic adherencies. The following day after the operation, Mrs Julia health got worse, she was sweating, pale and her blood pressure low, she presented a medical picture of posible internal bleeding. At 12:30 midnight of the following day she was submitted to a laparoctomy to determine the origin of the hemorriage. They found a massive hemorrage in her abdominal cavity and a laceration in the spleen organ with a massive hematoma at 8:00 a.m. Mrs. Julia died.

(a) Damages are awarded for the mental suffering and anguish of each of the Fourteenth (14) children of the deceased Mrs. Julia Laboy Rosa in the basic sum of $100,000; that is, for the total sum of $1,400,000.

(b) It fixed the amount of 280,000.00 for damages suffered, by the Mrs. Julia when she was without blood for a whole day, the same shall be distributed in equal parts to all her children.

Not in agreement with the above mentioned judgment, the Commonwealth of Puerto Rico filed a appeal in this court. The appeal does not cuestion the determination of the negligence as decreed by the court but the errors presented verse around the amount of damages granted in excess of the

compensation that could be granted in accordance to the Law of Claims the State. We modify the judgment in controversy to adjust the same to the maximun limits establish by said act.

The Law of Claims against the State, in its Article 2 (a) 32 LPRA, Sec. 3077, decrees the following in accordance to the limits by which the Commonwealth of Puerto Rico acceded to be sued:

> "3077. Claims and suits against the Commonwealth - Authorization
>
> Authorization is hereby granted to sueu the Commonwealth of Puerto Rico before the Court of First Instance of Puerto Rico for the following causes of action:
>
> "(a) Actions for damages to a person or property up to the sum of seventy-five thousand (75,000) dollars caused by a culpable or negligent act or omission of any official, agent, or employee of the Commonwealth, or of any other person acting in an official capacity within the scope of his duty, office, or employment. Where such action or omission causes injury to more than one person, or where a single injured party is entitled to several causes of action, the compensation for damages caused by such action or omission shall not exceed the sum of one hundred and fifty thousand (150,000) dollars. If from the findings of the court it arises that the sum of the damages caused to each one of the persons exceeds $150,000, the court shall proceed to prorate said sum

among the plaintiffs, taking as a basis the damages sustained by each."

This precept is free of all ambiguities and the Supreme Court of Puerto Rico has expressed itself on constitutionality of same. In three years after the instant case was resolved, in Gonzalez Pérez v. E.L.A. _____DPR_____(1995); 95 JTS 52 Publish opinion of April 26, 1995 citing Defendini Collazo v. E.L.A._____DPR_____ (1993); 93 JTS 119, opinion dated July 15, 1993. which rejected the argument the the Law of Claims against the State violates the constitutional principles of due process and equal protection of the law.

In reference to the argument that the said statute violes the principle of equal protection of the laws under our constitution, the Supreme Court in Defendini state the following:

The petitioners sustain that the law created a discriminatory clasification (in violation fo the equal protection of the law) when it distinguishes between claims against the state and those that are private. In the first ones it is only comensated up to the limits, while in the second ones there are no limits. Consider that there is a rational nexus between the interest to protect the public treasury and the limitation to the compensable amount this clasification responds to real diferenses between the State and a private entity. Through the State the citizens receive services such as public security and medical services among them. To finance the same it has limited funds. On the contrary, the private entities have none of these responsabilities.....This diference justify said challenged clasification and demostrates that a rational nexus exists between the interest of the State in the protection of its public treasury and the limitation to the compensable amounts (Our emphasis case citation omited)

Neither Law 104 violates due process of the law when it imposes economic limits. This arguments was the object of discussion in **Defendini Collazo, supra**. There the Supreme Court (of Puerto Rico) express itself in the following manner:

> "The Legislature, in its excercise of its a power as a State, has ample faculties to aprove economic reglamentation directed to provide the welfare of the People. The only limitation it has is establish by the due process guaratees. The right to file a complaint in torts constitute a property interest (omitted citations).
>
> As we have disposed beforehand, the interest of the State in the protection of the public treasury is a legitimate one which is reasonably related to the economic limitation disponsed by law. Therefore, the only thing we must determine is if said limits are clearly arbitrary and therefore violating due process of the law.
>
> The selection of the limits of $75,000 and $150,000 is based an evidence relative to the economic impact that may fall or the public treasury regarding claims against the State. Therefore, the limits have a fundamental rationale and are not clearly arbitrary.
>
> In light of these determinations we resolve that Article 2 and 7 of Law 104 as amended, do not violate the guarantee of sustantive due process. There is no constitutional vice whatsoever. Therefore, we sustain its constitutionality."

We recognize that the loss of a dear one is difficult, not to almost imposible, to quantify in dollars and cents. Moreover, as human beengs we do solidarize ourselves with the suffering of the follewman, however this fact does not grants us the power to alter the limits established by Law 104. Our function as judges does not include that to legislate and neither omit judicial prescedents. "If by reason of the passage of time and the development of the economy, these limits must be revese established in 1983, this is task corresponds to the Legisture". **Defendini Collazo v. E.L.A., supra**, page 11011.

Consonous with the previous exposition, we revoke the judgment in controvesy. We modify the compensation granted to that form that Plaintiff will receive the maximun contemplated in Article 2 of the Law of Claims against the State:
$150,000.

Accorded by the Court and certified by the General Secretary.

(signed)_____
Gladys Ortega Ramírez
Subsecretary General
Attorney Aida I. Oquendo Graulau
Secretary General

COMMONWEALTH OF PUERTO RICO
TRIAL COURT
GUAYAMA PART

SUCS. CECILIO HUERTAS BARBOSA AND THE COMMUNITY PROPERTY FORMED WITH JULIA LABOY ROSA ; CICILIO DANIEL, SALVADOR SANTOS, HERMINIA, ELMIS, MANUEL, MINERVA, JOSEFINA, CARMEN IRIS, LUZ, MATEO AND FRANCISCO, ALL SURNAMED HUERTAS LABOY; SANTOS LABOY AND CASIMIARA MARTINEZ & COMMUNITY PROPERTY FORMED BY SANTOS LABOY AND CASIMIRA MARTINEZ	**CIVIL NO.** GDP88-2291 **SUBJ: TORTS**
PLAINTIFFS	
VS	
ALEJANDRO BUITRAGO HOSPITAL AND/OR THE COMMONWEALTH OF PUERTO RICO, MUNICIPALITY OF GUAYAMA, AND THE ADMINISTRATION FOR PATIENT'S COMPENSATION FUND PLAINTIFSS KNOWN AS JOHN DOE, RICHARD DOE AND OTHERS, WHO ARE CO-INSURERS OF THE ABOVE STATED CO-DEFENDANTS AND/OR MEMBERS OF THE MEDICAL TEAM FOR ALEJANDRO BUITRAGO HOSPITAL, WHOSE NAMES ARE UNKNOWN BUT WILLO BE NAMED DEFENDANTS "A" TO "Z" & OTHERS; DR. LUIS RODRIGUEZ GONZALEZ, THE COMMUNITY PROPERTY AND INSURANCE COMPANY NAMED AS THE INSURER FOR	**Exhibit E**

RODRIGUEZ; CORPORACION INSULAR DE SEGUROS :
DEFENDANTS :
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JUDGMENT

Appearing at the full hearing on March 25th and 26th of 1998 were the plaintiff, represented by attorney Rafael A. Oliveras López de Victoria, and defendant, through attorney Sara Vicenty Azizi. Co-defendant Dr. Luis Rdoríguez Gonzalez was served on date of April 1st of 1989; he never appeared. Default was entered on date of December 21st of 1990, and procedures in the case continued therein,

Plaintiffs entered their own testimonies as proof of fact; in addition to, they presented as witnesses Dr. Vincent Wade and Dr. Roque Nido Laracuente. The first physician is an expert witness in the specialty of obstetrics and gynecology; whereas, the latter is a major surgeon, he was solely announced as eyewitness to a surgery which was performed on September 26th of 1988.

On the other hand, the defendant did not present any testimonial nor documentary evidence. They only cross-examinaed evidence presented by the plaintiff, stipulating as evidence all records from Alejandro Buitrago Hospital, which consisted of the hospital medical records, in addition to a pathological report by Dr. Francisco J. Landrón. Plaintiff also submitted a report by Dr. Vincent Wade Masters, M.D., which is an expert opinion as to medical malpractice relating to the medical treatment endured by the deceased, Julia Laboy Rosa. Same was marked, without objection by co-defendant Commonwealth of Puerto Rico, as an exhibit from the plaintiff. In accordance with the

proof submitted and admitted, and after careful analysis and study of same, and in view of the credibility shown us by those witnesses who did testify, this Court renders the following:

DETERMINATIONS OF FACTS

1. On the date in which the events of this case ocurred, Mrs. Julia Laboy Rosa (Doña Julia), was married to Cecilio Huertas Barbosa.

2. During their marriage, the stated spouses conceived fourteen (14) children, of which twelve (12) who still survive, testified at the trial, excepting Mateo Huertas Laboy, who is disabled.

3. Alejandro Buitrago Hospital (A.B.H.) is a hospital-medical institution which is operated, controlled and/or managed by the Commonwealth of Puerto Rico.

4. On date of September 23rd of 1988, Mrs. Julia was hospitalized at H.A.B. for total abdominal hysterectomy with "a bilateral salpingo oopherectomy", an elective surgery which Dr. Luis Rodriguez Gonzalez (Dr. Rodriguez Gonzalez), had ordered.

5. Mrs. Julia was examined at the above stated institution in the admissions ward by hospital physicians, as well as by Dr. Rodriguez Gonzalez.

6. Once surgery was performed on September 24th of 1988, Mrs. Julia was taken to the recovery room, and later on to her own room within said hospital.

7. During that time in which Mrs. Julia was attended by A. B. H. hospital personnel, her daughter Mrs. Luz M. Huertas Laboy (Mrs. Huertas Laboy), remained with her during the evening and morning hours of September 24th and 25th of 1988.

8. During morning hours at about 8:00 A.M., on September 25th, Mrs. Huertas Laboy observed that her mother was cold pale, sweaty, weak, having difficulty breathing and opening her eyes.

9. At said time, Mrs. Huertas Laboy requested that the nurses examine Mrs. Julia, given her noticeable precarious condition of health.

10. Once Mrs. Julia was examined by a physician - who was not Dr. Rodriguez Gonzalez - he found that her blood pressure was low, 90/80, with tachycardia, since her pulse rate was at 100 pulses per minute; she was pale, sweaty and had problems as to orientation. The examining physician indicated that there existed a possibility that Mrs. Julia might be bleeding. Lab tests were ordered to confirm or reject said findings.

11. Said labs reflected very low and dangerous hemoglobin levels (8mg.), confirming that Mrs. Julia had internal bleeding.

12. On September 25th of 1988, Mrs. Julia was visited by several hospital physicians, specifically at 2:04 P.M., and later on at 7:10 P.M.

13. During said stage, Mrs. Julia was very weak, and her health condition deteriorated as time went by.

14. At 12:30 A.M. on September 26th of 1988, after more than thirteen (13) hours had elapsed since Mrs. Julia was found to be in a precarious post-surgical condition of health, she was submitted to an exploratory laparotomy as to determine the source of the hemorraging. A massive hemorraghe was discovered within abdominal cavity, and a laceration to her spleen, jointly with a massive hematoma.

Once surgery was concluded, Mrs. Julia was taken into intensive care, her condition was extremely grave.

Since there was no blood available at A.B.H.'s blood bank, family members and the surgeon made phone contacts to obtain some. Said steps were taken in the early morning hours (at about 5:00 A.M.) of september 26th of 1988. It was after this that Mrs. Huertas Laboy left for San Juan to retrieve it. That tardiness in procedure prompted that the needed transfusions were not given, thereby resulting in her death.

15. Mrs. Julia died at around 8:00 A.M; her daughter Mrs. Huertas Laboy, learned about said fact at the moment while she was in San Juan procuring the blood which her mother was needing.

16. It surfaces from the Forensic Medical Report by Forensic pathologist, Dr. Francisco J. Landrón, that the cause of death of Mrs. Julia, was massive internal hemorrahge due to a laceration of the spleen, of a traumatic-yatrogenic origin,as the result of the first surgical procedure.

17. Expert proof established by Dr. Vincent Wade Masters gynecologist-obstetrician demonstrated that there was gross negligence in the management of Mrs. Julia, as a patient, within the following areas:

(a) The surgery effected by Dr. Rodriguez Gonzalez was not the appropriate one. An open laparactomy was performed to extract her reproductive organs, instead of a vaginal hysterectomy procedure.

(b) During the pre-surgical stage, a sufficient amount of blood was not requested, in case of any emergency that might have arosen after said surgery.

(c) Investigations about the reasons as to why there was such loss of blood upon performing a laparotomy was delayed, since there was no adequate follow-up to provide for any forseable post-surgical emergency intervention, that could

have been required. The medical record from Alejandro Buitrago Hospital indicates that there were at least four (4) visits by four different physicians between 10:00 in the morning and 7:00 on the night of September 25th of 1988. Nevertheless, no surgeon was called in for consultation up to that point. At 11:00 P.M. at night, as pointed out by Dr. Roque Nido Laracuente, was when the Hospital's medical and/or paramedical personnel consulted with a surgeon.

(d) The laparotomy which was effected after the abdominal surgery, demonstrated that the spleen had been lacerated, evidence of a traumatic exploration or one carried out without due care.

(e) No objective diagnostic tests such as a sonogram and/or CAT scan were carried out, which would have demonstrated anemia and the abdominal bleeding which she was suffering.

f) ABH ersonnel did at no time order that blood be obtained for said patient on day of September 25th of 1988, and it was not until 7:00 p.m. in the evening of that day that 500 cc of blood were administered to her.

g) Once the emergency surgery realized on midnight of September 25th of 1988 was concluded, there was no blood left at A.B.H.; consequently, Mrs. Julia went into hypovolemic shock. Only upon request of the surgeon and family members was that in a tardy manner, were telephone contacts made to obtain blood, this during the early morning hours of September 26th of 1988. According to Dr. Vincent Master Wade, said circumstance resulting in lack of blood at A.B.H. precipitated Mrs. Julia's death.

(18) Eight (8) months after Mrs. Julia's death, her husband Mr. Cecilio Huertas Barbosa, died.

(19) Due to their mother's death, plaintiffs haave suffered circumstances highlighted by

depression, pain, suffering and anguish which continues to this day, as this Court was able to observe, when each one of them testified. Each one of the co-plaintiffs, excepting Mateo Huertas Laboy who is disabled, stated in an evidently sad and painful manner, about the suffering and anguish which they have gone through, due to their mother's premature death. Their statements were genuine and real; grave and unforgetable. Co-plaintiffs Carmen, Mateo and Luz M. were minors, at the time of their mother's death. Santos Huertas could not contain the tears during the whole time in which he deposed. He had to take charge of his sibblings, both morally and financially.

CONCLUSIONS IN LAW

The instant complaint is grounded upon Article 1802 of the Civil Code for Puerto Rico (31 LPRA, sec. 5141) which within pertinent section establishes that..." he who either through action or omission causes a damage to another, through intervening guilt or negligence, becomes obligated to redress the damage caused therein."

Whenever interpreting said article, the Supreme Court has ruled in the sense that liability resulting from same gives rise to recovery, if three elements or requirements are met:

1. That a damage has been caused.
2. That there exists culpability or negligence.
3. That there exists a causal relationship between the damage caused, and intervening guilt or negligence. See ***Pérez Escobar vs. Collado***, *90 DPR 806 (1964)*; ***Hernandez vs. Fournier***, *80 DPR 93 (1957)*.

In cases in which malpractice or medical negligence is alleged, it corresponds to the plaintiff to prove, through a preponderance of the evidence, that

treatment rendered by the physician was the factor that with greatest probability, contributed to any damages to the patient, as well as establishing the causal link required under Article 1802 of the Civil Code. ***Rodriguez Crespo v. Hernandez***, *121 DPR 639, 650 (1988);* ***Cruz v. Centro Medico de Puerto Rico***, *113 DPR 719 (1983);* ***Zambrana v. Hospital Santo Asilo de Damas***, *109 DRP 517 (1980).*

Whenever the performance of a physician is evaluated, we must never forget that there exists a presumption that he has exercised a reasonable level of care, and that the medical treatment offered was adequate. See, among others, ***Ramos Robles v. Garcia Vicario,*** *93 JTS 167.*

As to rebut that jurisprudential presumption which covers defendant physicians, plaintiff has to prove that defendant physician and/or physicians did not provide that medical attention which, in view of current means of communication and teaching, and in accordance with current state of scientific and practical knowledge within medicine, do comply with accepted general requirements. See ***Rodríguez Crespo v. Hernández***, above.

Plaintiff can not rely upon the mere possibility that said damage was due to non-compliance by such physician, of his or her professional obligations. That the patient may have suffered a damage or that the treatment has not been successful, does not raise a presumption of negligence by said physician. See ***Rodriguez Crespo v. Hernandez,*** among others.

It is required that causal relationship not merely be established on the basis of mere speculation or conjecture. ***Rodriguez Crespo v. Hernandez,*** above; ***Rios Ruiz v. Mark,*** *119 DPR 816;* ***Ramos Orengo v. La Capital,*** *88 DPR 315 (1963);* ***Sáez v. Municipio de Ponce,*** *84 DPR 535 (1962);* ***Rivera v. Dunscombe,*** *73 DPR 819 (1952).*

In terms of causal relationship we are governed by the theory of adequate causality. ***Jimenez v. Pelegrina Espinel,*** *112 DPR 700 (1982);* ***Soc. de Gananciales v. Jerónimo Corp.,*** *103 DPR 127 (1974).* According to said theory: any condition under which no results take place, is not a cause, but rather the one which ordinarily produces it, in accordance with general experience.

Under same, the question boils down to determining if occurence of a damage was to be expected within the normal course of events or, if on the contrary, it remains unrelated to said possible estimation. J. Santos Briz, *Comentarios al Código Civil y Compilaciones Forales,* Madrid, Ed. Rev. Der. Privado 1984, Vol. XXIV, page 287. Pursuing this theory, in cases in which causes concur, we have ruled that the matter to be elucidated is which of these grounds was the efficent. That is, that we must asses that the decisive one is whichever one precipitates the damage, because of its circumstances. ***Valle v. Amer. Inter. Ins. Co.,*** *108 DPR 6692, 6697 (1979);* ***Toro Lugo v. Ortíz Martínez,*** *113 DPR 56 (1982).* ***Cárdenas Maxán v. Rodriguez,*** *125 DPR 702 (1980).*

If from the evidence rendered, several probable sources of damage arise, no liability shall be imposed upon the physician, unless that upon examining the totality of circumstances it arises that his negligent behavior was what, in greater probability, must have prompted said harm. See ***Vda. de López v. E.L.A.,*** *104 DPR 178, 183 (1975);* ***Ramos Orengo v. La Capital,*** *88 DPR 315 (1963);* ***Sáez v. Municipio de Ponce, supra; Zambrana v. Hospital Santo Asilo de Damas,*** *supra;* ***Cruz v. Centro Médico de Puerto Rico,*** *supra.*

Our juridical rulings obligate the physician to answer for torts and damages caused exclusively because of his negligent actions, due to lack of care

or lack of professional skill, as required by circumstances. Brau del Toro, Herminio, ***Los Daños y Perjuicios Extracontractuales en Puerto Rico,*** *supra.*

In Puerto Rico, minimal rules of care, knowledge and skill required from physicians in cases of alleged professional malpractice are that they offer their patients that (level of) attention that in view of current modern means of communication and teaching and in accordance with scientific knowledge and prevailing practice of medicine, satisfy those professional demands generally accepted within the medical profession. ***Oliveros v. Abreu,*** *101 DPR 209, 226 (1973);* ***Ríos Ruíz v. Mark,*** *supra;* ***López v. Hospital Presbiteriano, Inc.*** *, 107 DPR 197 (1978);* ***Morales v. Hospital Matilde Brenes,*** *102 DPR 188 (1974);* ***Negron v. Municipio de San Juan,*** *107 DPR 375 (1978);* ***Cruz v. Centro Médico de P. R.,*** *113 DPR 719 (1983);* ***Pérez Torres v. Bladuell Ramos,*** *120 DPR 295 (1988);* ***Rodríguez Crespo v. Hernández,*** *supra;* ***Brau del Toro, Herminio, Los Daños y Perjuicios Extracontractuales, JTS Publishers,*** *Vol. I, San Juan, 1986, page 248.*

For a plaintiff to establish prima facie in a tort case due to alleged medical malpractice, the plaintiff has to:

1) establish proof as to minimum standards of medical knowledge and care applicable to generalists and specialists; **2)** demonstrate that the defendant did not comply with said standards, during treatment of the patient, and **3)** that this was the *proximal* cause of the injury (damages) suffered by the patient. See ***Medina Santiago v. Vélez,*** *120 DPR 380 (1988);* ***Rodríguez Crespo v. Hernández,*** supra; ***Rodríguez Retomar v. Maldonado,*** *100 DPR 662 (1972);* ***Oliveras v. Abreu,*** *101 DPR 209 (1973).* Therefore, it is incumbent upon the plaintiff to prove

by a preponderance of evidence that the medical treatment and/or medical non-treatment provided by the defendant was sufficient and proximal cause which with greater probability prompted said damage, and which forms the causal element required under our Article 1802 of the Puerto Rico Civil Code, above. See ***Cruz v.Centro Médico de Puerto Rico,*** *113 DPR 719 (1983).* Said proof must also demonstrate what are the demands for the profession as a whole, in view of current sicentific knowledge, by means of communication and continued education programs. ***Medina Santiago v. Vélez,*** supra. ***Rodríguez Crespo v. Hernández,*** *supra.* It has repeatedly been pointed out that medical'hospital negligence has to be established as a general rule by means of competent expert proof: ***Quiñones v. Duarte Mendoza,*** *112 DPR 223)1982;* ***Oliveros v. Abreu,*** *supra;* ***Rodriguez Crespo v. Hernandez,*** *supra.*

On the other hand we must point out that the physician enjoys ample professional discretion in the treatment of a patient and does not incur into liability if the treatment which he provides to his patient, even when mistaken, is encompassed within certain reasonable limits and accepted within broad sectors within the medical profession. See ***Pérez Torres v. Balduell Ramos,*** *supra;* ***Lozada v. E.L.A.,*** *116 DPR 202, 217 (11985);* ***Pérez Cruz v. Hosp. La Concepción,*** *115 DPR 721(1984);* ***Fernandez v. Hosp. Gen. San Carlos, Inc.*** *113 DPR 761 (1983);* ***López v. Hospital Prebiteriano,*** *supra*

That is how liability has been rejected whenever the physician has used proper professional judgment and when same is in tune with what is accepted within ample sector of the medical profession.

Therefore the existence of diversity of criteria amongst medical authorities as to whether certain treatment or procedure was or was not valid under the circumstyances of such case, is a valid defense for a defendant physician.

An honest and reasonable error in judgment as to the procedure used by the physician may not be a sufficient basis for imposing of liability upon him, above all whenever the pattern of conduct which he displayed is a practice accepted by modern medical profession in said type of situations, and whenever medical authorities do not agree as to the treatment rendered. See ***Cruz v. Centro Médico,*** *supra*; ***Fernándfez v. Hosp. Gen. San Carlos, Inc.,*** *supra*; ***Rodríguez Crespo v. Herández,*** *supra, to page 649.*

Once applicable law is viewed, we then apply same to the particular facts of the instant case.

Based upon the proof presented by the plaintiff, the court concludes that we are in presence of a clear-cut case of gross medical negligence, determined through mismanagement to which the deceased patient, Mrs. Julia, was subjected to, to wit:

(1) her spleen was lacerated when Dr. Rodríguez González performed a surgery which was not indicated for her condition; (2) when post surgical diagnostic tests were not performed to determine the location and degree of internal bleeding which she had been suffering; (3) by not immediately consulting with a senior surgeon upon knowing that she had been bleeding (at 10:00 A.M. on September 25th of 1988) and by waiting almost a whole day and part of that night, when Dr. Roque Nido Laracuente was called in and who, in effect, performed such surgical procedure (4); by not having any blood available nor making same available in time to avoid that the deceased party

die from hypovolemic shock.

It is sad to think that a lady who gave birth to fourteen (14) children, who was in excellent health upon admission to A.B.H. and all her vital organs were intact, could die due to lack of care and prudence by the defendant and their employees, officers, directors and/or agents.

The children of Mrs. Julia Laboy Rosa gave their version of the anguish and suffering suffered by every one of them.

All the plaintiffs were very depressed and wept in court.

The plaintiffs expressions of pain were evident and genuine, in spite of the facts having occured more than eleven (11) years ago. The mental and moral injuries suffered by each one of the plaintiffs are serious and profound, particularly as to co-plaintiffs Carmen Huertas Laboy, Mateo Huertas Laboy, Luz M. Huertas Laboy, and Santos Huertas Laboy. The first three were minors at the time of their parents death, and became orphaned at a young age. Santos Huertas Laboy was the eldest of the sibblings; he never stopped weeping during his testimony, given the very painful and sad memories that he suffered when, in less than six months, he had to bury both parents, and take charge of maintaining not only the financial, but also the moral and mental support of his sibblings, to help them cope with their lives.

We must compensate the anguish and suffering of the plaintiffs for there to exist rightious justice.

Said intention inspires us to carry out a detailed analysis of the doctrine of soverign inmunity and of Law No. 104 of 1955, 32 L.P.R.A. sections 3077-3084.

The Law of Litigations against the State under its Article 2(a), 32 L.P.R.A., section 3077, authorizes suits against the Commonwealth of Puerto Rico in torts actions resultant from negligent actions or omissions by its employees, whenever acting within an official capacity, and within the framework of their functions. By approving said law, the state broadly waived protection of soverign inmunity, and for the first time a cap was imposed as to the limit of claimable amounts.

Subsequently a determination ensueded in the case of ***Galarza Soto v. E.L.A.,*** *109 DPR 179 (1979).* Judge Rigau in his opinion, partially concurring and partially dissenting, sustained that the soverign state doctrine is unconstitutional since it "...violates the right of equal protection under the law by establishing that recovery can be effected for damages caused by private parties, but not forthose caused by the State, since such a classification lacks a rational basis... and because... it constitutes an inequity which violates one of the general principles of law: equity..." Id., pages 201-202.

On the other hand, in his particular opinion, Judge Irrizarry Yunqué gathered that Law 104, violates due process of law by hindering or attempting to limit access to the courts by those persons to whom the State has inflicted a damage.

He further interpreted that said law was contrary to equal protection under law. Finally, he stressed the fact that soveringty of the State Doctrine was decadence.

In 1981 the case of Torres v. Castillo Alicea 111 DPR 782 (1981) was decided, which held that Article 2(a) of Law No. 104, above, was unconstitutional. The Financial limits were declared to be unconstitutional since this prompted those aggrieved to resort to the Legislative Assembly in

search of exemptions, thus violating the principle of separation of powers and equality under the law.

Things being as they were, the Legislative Assembly amended Law No. 104, above, through Law No. 30 of September 25th of 1983, increasing compensatable limits to $75,000.00 for one cause of action, and to $150,000.00 in cases of a claimant with several causes (of action) or several claimants.

In view of the said developments, our highest forum resolves ***Defendini Collazo v. Estado Libre Asociado.*** *93 JTS 119,* to in fact determine whether compensatable limits are unconstitutional.

Under analysis of the clause of equal protection under the laws, it was established that a rational link existed between the interest of protecting the treasury, and limits for compensatable amounts. Under the spectrum of the principles of due process under the law it was acknowledged that the State's interest in protecting the treasury is legitimate and reasonably related with the economic limitations imposed therein. It was further stated that imposed limits are under rational grounds, and were not patently arbitrary, due to the economic impact that claims against the Commonwealth of Puerto Rico have upon the treasury.

With the next century now approaching, this court is today confronted with said precendents. With the intent of rendering justice, we must moderate and visualize them in tune with those needs and realities which pervade our times.

The doctrine of immunity of the soverign is in decline. The tendency both in the United States and in Puerto Rico has been to limit same, (the immunity). Moreover, several american state jurisdictions have abolished ***Aleman Martínez v. Commonwealth.*** *98 JTS 52;* ***Personal Opinion by Associate Judge Irrizarry Yunqué in Galarza Soto v. E.L.A.*** *supra;* ***Comments about the***

Doctrine of State Immunity: Piñeiro v. E.L.A., *45 Rev. Jur. U.P.R. 79,* ***Mario J. Pabón Cátala,*** *(1976).* it. See Personal Dissenting Vote Issued by Associate Judge Naveira de Rondón in

Numerous reasons have contributed towards said tendency. Let us then see which ones these are. The current differentiations in our juridical structure between the State and its citizens, in terms of extra-contractual liability, is totally unreasonable. The State must answer under equal terms and sufficient extension, in torts actions, identical to that of their citizens. The State renders certain services to the populace; as part of said service, it must answer for those torts that they produce during their rendering thereof. Said logic would result in extensive benefits for the citiznery as a whole, since it would entail that governmental officials would carry out their duties with due care and excellence. To said ends see ***Is the Doctrine of State Immunity in Puerto Rico Unconstitutional?*** *43 Rev. Col. Ab. 6651 (1982), R. Eifren Bernier.* On the other hand, in the majority of occasions a lack of proportion between the amounts granted to persons affected by negligent actions by governmental employees, and the reality of the damages by them suffered, becomes evident. Said circumstance makes the established economic limits arbitrary, and furthermore places said citizens at a disadvantage whenever said tort is caused by the State, vis a vis when prompted by a private citizen, under presumption that the remedy granted is proportionate to whatever damage is inflicted.

Finally, this court does not find any reason whatsoever to ground upon the argument that interest in protecting the treasury sustains the constitutionality of the existing economic ceilings. In fact, sentences rendered against the State are the the reason for the government's financial problems.

Los límites económicos en las demandas contra el Estado. Furthermore, alternative means such as purchasing insurance, have been explored, to face any impact that the elimination of the financial caps within the government's financial capability, might have. See: ***Is the Doctrine of State Inmunity in Puerto Rico Unconstitutional?***, supra.

This court deems that current financial ceilings established under the Law of Litigation against the State are totally unrealistic and unreasonable. Suffice with a mere examination of statistics gathered by the Department of Labor and Human Resources, about Consumer Price (index), Percentual in Changes of the General Consumer Price Index and Purchassing Power of Consumer Dollars for all the families within Puerto Rico, which covers from 1984, and we then see an ample economic development, and the resulting devaluation of the dollar. An obvious fact is that the financial caps thereby imposed are unchanging, lacking any procedure for a continual indexing. Consequently, limits which have been fixed neither adjust to, nor are proportional to any changes within the economy.

Current financial caps were established in 1984. Since then many years have gone by, and all circumstances that have been examined undoubtedly point towards the conclusion that the above stated section 3077 is unconstitutional; we specifically dictaminate this, since it violates the fundamental principles of due process of law and of equal protection uncer the law. Being therefore unconstitutional, it has no place whatsoever within our judicial system.

Through said decree, a priviledged manner of litigating thus disappears from the juridical stage, one that promotes injustice, since it induces a lax attitude whenever litigating cases, to a point such

that in this particular one, the State allowed it to be extended during ten (10) years, and in the end, did not even provide proof of any kind, nor any prior reasonable offer either. Actually, what the State did was, in an abusive manner, force the plaintiffs to litigate a clear-cut case of malpractice, which required that they invest a substantial degree of time and money, by having to contract medical experts to prove their case.

Upon fulfilling our duty to dispense justice, we should execute and have an obligation to open the gates to allow the flow of ideas and doctrines which respond and adapt to the reality of modern times, and even to dislodge them, whenever the substative legal framework integrate a monolithical wall which hinders soverign expression of justice which demands and claims a breach so it may flow through; in this case, a remedy which would adequately compensate the breadth of the plaintiffs anguish and suffering, and which would hinder the commission of an injustice.

Having stated the above, we must evaluate the damages.

"Damage is any moral or material loss which a person may suffer, either to his/her basic material assets, to his property or patrimony, prompted in violation of a juridical rule, and for which he has to answer to another...:

Monetary indemnity or compensation consists in providing an adequate sum of monies to the aggrieved party, to compensate their damaged interests. It is like an actual substitution in which money replaces tortfeasible damages suffered therein". ***García Pagán v. Shiley Caribbean,*** *122 DPR 193 (1988).*

The suffering felt by a son/daughter due to the loss of his mother is an unavoidable psychic process for all normal human beings; it is an

ordinary customary fact of life, of general and common knowledge, notorious and indisputable which is or must be judicially acknowledged. Even so, it must be proven that the claimant's health, wellbeing or happiness was affected in a measureable extent. See ***Moa v. E.L.A.,*** *100 DPR 573 (1972).*

Here we encounter a family group with extremely solid family ties, a family group with an extraordinary level of stability, to a point such that Mrs. Julia's absence undoubtedly precipitated the premature demise of her husband Mr. Cecilio Huertas. All fourteen (14) children were left orphaned from father and mother barely within eight (8) months after Mrs. Julia's departure. The faces and demeanor in court of all their children would have to be observed, more than ten (10) years after these events, to be able to perceive how difficult and permanent this blow that life has struck them was and is, for these human beings. This is definitely not a passing pain or a fragile ordeal; this is an inmense, real and unforgettable damage.

The task of estimating damages is anguishing and difficult. Nevertheless, that direct contact which we have had with the proof places us within a privileged position as to determine the true and actual cost of the damages in this case. See ***Rojas v. Maldonado,*** *68 DPR 818 (1948);* ***Rodríguez Cancel v. A.E.E.,*** *116 DPR 443, 451 (1985).*

A compensation so conceived, endorsed and evaluated in response to said standards, placed upon the exercise of judicial discretion, such as in similar cases, conveys the deepest feelings for our souls from the gratification resultant from the moral conviction of justice well dispensed.

In consideration of the above stated determinations of fact and conclusions of law, the Court renders the following Sentence:

a) Compensates torts and damges for the suffering and mental anguish of each and every one of the fourteen (14) children of the deceased, Mrs. Julia Laboy Rosa at a basic amount of $100,000.00 each, that is, a sum total of $1,400.000.00.

b) Establishes an amount of $280,000.00 for tortfeasible damages suffered through a horrendous death inflicted upon Mrs. Julia by forced to be bloodless for a full day, to be distributed in equal parts amongst all her children.

This Court orders payment of costs and fees for the plaintiff, plus all legal interests accumulated from the sentence, beginning from time of notice therein.

BE IT REGISTERED & NOTIFIED.

In Guayama, Puerto Rico this 20th day of october of 1998.

[sgd.]

DANTE AMADIS RODRIGUEZ SOSA
Superior Court Judge

Certified:
Edna Ramos
Secretary

GLORIA MA. GUZMAN BERMUDEZ
Court Secretary I

IN THE UNITED STATES OF AMERICA
FOR PUERTO RICO DISTRICT

SUNC. CECILIO HUERTAS BARBOSA Y LA SOCIEDAD DE BIENES GANANCIALES COMPUESTA POR CON JULIA LABOY ROSA; CECILIO DANIEL, SALVADOR SANTOS, HERMINIA ELMIS, MANUEL MINERVA, JOSEFINA, CARMEN IRIS, LUZ, MATEO Y FRANCISCO, TODOS DE APELLIDO HUERTAS LABOY; SANTOS LABOY Y CASIMIRA MARTINEZ Y LA SOCIEDAD LEGAL DE BIENES GANANCIALES COMPUESTA POR SANTOS LABOY Y CASIMIRA MARTINEZ. **Plaintiffs** Vs. COMMONWEALTH OF PUERTO RICO. **Defendant**	**Civil No.** _____ **Declaratory Judgment**

COMPLAINT

TO THE HONORABLE COURT:

COMES NOW Plaintiffs thru the undersigned attorney and respectfully alleges and prays:

1. Plaintiffs are resident of both the Commonwealth of Puerto Rico and the Commonwealth of Massachusets.

2. The Commonwealth of Puerto Rico operated on or around 1988 a medical hospital facility known as Alejandro Buitrago´s Hospital.

3. That Plaintiffs and the Defendant have litigated in the local court a civil action for damages in a malpractice case before Court of First Instance, Superior Court Guayama, under civil number GDP88-2291. A judgement was entered in favor of Plaintiffs in the amount of $1,640,000.00. Said award was granted due to the death by gross negligence of Plaintiff's mother, Julia Laboy Rosa. (See exhibit A)

JURISDICTION

4. Plaintiff respectfully invokes the jurisdiction of this Honorable Court under Section 1331 and 2201 Title 28, United State Code Annotated and the Constitution of the United States, V, XIV, IV and VI Amendments whereby plaintiff seeks the annullment of Section 3077 (A) of Title 32 of Laws of Puerto Rico Anotated for the same is unconstitutional.

5. Plaintiffs respectfully challenge said law of the Commonwealth of Puerto Rico for the same unconstitutional, and in grave violation of the Fifth and Fourtheen Admendments of the United States Constitution. Moreover, it violates the concept of human dignity typified both in the U.S. Constitution and the Constitution of the Commonwealth of Puerto Rico. Plaintiffs respectfully understand that the Eleventh Admendment does not apply in this case for the jurisdiction sought is under the Fifth and Fourtheen Admendments of U.S: Constitution. ***Stanley Díaz Gandía vs. Dapena Thompson***, (Civil no. 95-2005, July 25, 1996 , US Court of Appeals)

GENERAL ALLEGATIONS

6. In the Judgment issued in the cited civil case the Superior Court declared that Section 3077 of Title 32 of LPRA violates the Equal Protection Clause and the Due Process Clause under both the United States Constitution and the Commonwealth of Puerto Rico Constitution. (See exhibit A)

7. Moreover, it stated that the maximum amount to be awarded not to exceed the amount of $150,000.00 per occurrence by declaring unconstitutional Section 3077 (B). The court awarded each Plaintiff in said case $100,000.00 for the death of their mother and an additional amount of $240,000.00 for the pain and suffering of the deceased Julia Laboy who lasted more than one day in grave pain before her death.. She died due to a hyporvolumic shock (loss of blood) while she was hospitalized, treated and operated at the Alejandro Buitrago Hospital. (See Exhibit A).

8. In declaring Section (3077 (A)) unconstitutional, the Court expressed in its finding of law the that said statute violates Due Process and Equal Protection Clause. (See Exhibit A)

9. The Commonwealth of Puerto Rico appealed said judgment to the Circuit Court of Appeals of Puerto Rico stating that the Judgment entered by the Superior Court violates the doctrine established in the cases of ***Defendini Collazo v. E.L.A.***, 93 JTS 119. (See exhibit B)

10. The Circuit Court of Appeals of Puerto Rico substantially reduced, the Judgment of the Superior Court; It took away more than 92% the amount of compensation granted to Plaintiffs. The judgment was reduced from $1,640,000.00 to $150,000.00 notwithstanding the fact that the Circuuit Court never modified the finding relating to

damages. It just apply the maximum coverage payable by the Commonwealth of Puerto Rico. (Exhibit B)

11. A reconsideration was filed before the Circuit Court, stating in essence that the action entered in appeal violates the Due Process Clause and the Equal Protection Clause under both the U.S. Constitution and Commonwealth of Puerto Rico Constitution. Moreover, said judgment violates the human dignity expressed in the U.S. and Puerto Rico Constitutions. In addition, the judgment in appeals is confiscatory and in essence preempts the concept of property over the non-economic damages suffered by the Plaintiffs and their deceased mother. (See exhibit E).

REMEDY SOUGHT

12. Plaintiffs respectfully request that Section 3077-A be declared unconstitutional by this Honorable Court for it violates the Due Process and the Equal Protection Rights of Plaintiffs as expressed in the Fifth and Fourtheen Admendment of the Unites States Constitution. Moreover, plaintiffs understand that Section 3077(A) is confiscatory and does not grant damages in conformity to the loss and suffering that Plaintiffs have experienced in the local action, which were recognized by the Superior Court.

13. Plaintiffs respectfully understand that Section 3077(A) violates Due Process Clause of the U.S. Constitution on the following grounds:

a) It prolongs in an excessive and abusive manner the litigation of a case (in the instant case more than 10 years) by granting special privileges to the Commonwealth of Puerto Rico, specifically by not granting interest and attorney fee. The constitutional provision of a speedy, fair and just trial cannot be met as established in the Fifth and Fourtheen Admendment of the U.S. Constitution.

b) The maximun amount payable by the state violates the due process clause for it does not grant adequate and just compensation for individuals and/or persons who are the victims of the Commonwealth of Puerto Rico´s negligence. This situation occurrs in Puerto Rico in a daily basis.

c) The judgment entered by the Circuit Court of Appeals is confiscatory for it implies a taking without due process and compensation. The damages entered per se were never challenged.

14. Moreover, plaintiff respectfully solicit from this Honorable Court that Section 3077(A) be declared inconstitutional for it violates the Equal Protection Clause of U.S. Constitution on the following grounds:

a) Section 3077 (A) violates the Equal Protection Clause for it establishes the fact that a Plaintiff can recover damages from a particular person but not the same damages from the Commonwealth of Puerto Rico, ***Galarza Soto v. ELA***, *109 DPR 179.*

b) It creates a special situation for different individuals who seek damages from the Commonwealth of Puerto Rico. Certain individuals are deprived of compensation in regular normal cases like the present one; while others in civil right cases, before the U.S. District Court and againts Public Officials of Commonwealth of Puerto Rico, said Plaintiffs, can recover damages in excess of the $150,000.00 limits stated in section 3077 (A)

c) Also Section 3077 (A) violates the Federal Equal Protection Clause for it violates the human dignity of a person by not granting adequate and fair compensation to persons who have been the victims of a negligent act committed by the Commonwealth of Puerto Rico. By lowering in an inordinate manner the compensation for damages, the Commonwealth of Puerto Rico is constructively

promoting slavery in Puerto Rico, whereby its citizens are not even adequatly compensated in their damage. Human values and respect are grossly cheapen and greatly andangered, for the state can promote a policy of inefficiancy in the public sector.

15. Moreover, Section 3077(A) as well as the judgment in appeal entered by the Circuit Court, is extremily confiscatory for it denies fair compensation for non economic damages suffered by plaintiffs.

PRAYER

Therefore, in light of the above facts, the constitutional violations as well as the requested remedies, it is respectfully requested from this Honorable Court that a judgment be entered whereby this Honorable Court declares unconstitutional Section 3077 (A) of Title 32 of the Laws of Puerto Rico for it violates the Due Process Clause and Equal Protection Clause, under the Fifth and Fourtheen Admendments of the U.S. Constitution.

In San Juan, Puerto Rico at this date 3 of June, 1999.

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